

REMARKS

The Office Action dated July 14, 2004, has been received and reviewed.

Claims 1-3, 5-11, 13-18, and 36-49 are currently pending and under consideration in the above-referenced application. Each of claims 1-3, 5-11, 13-18, and 36-49 stands rejected.

Reconsideration of the above-referenced application is respectfully requested.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1-3, 5-11, 13-18, and 36-49 stand rejected under 35 U.S.C. § 112, second paragraph for allegedly being indefinite.

Specifically, the Office has objected to use of the recitation, “a reaction zone associated with [a] receptor,” in independent claims 1 and 36. Independent claims 1 and 36 have both been amended to replace the objected-to language with the more definite recitation, “a reaction zone comprising at least a portion of [a] receptor or in fluid communication with [the] receptor,” thereby indicating that the reaction zone and the receptor have at least some portion in common or are in fluid communication with one another.

It is respectfully submitted that amended independent claims 1 and 36 comply with the definiteness requirement of the second paragraph of 35 U.S.C. § 112. Claims 2, 3, 5-11, and 13-18 were apparently rejected merely from depending from rejected claim 1, while claims 27-49 were apparently rejected only on the basis of their dependencies from rejected claim 36.

For these reasons, withdrawal of the 35 U.S.C. § 112, second paragraph, rejections of claims 1-3, 5-11, 13-18, and 36-49 is respectfully requested.

Rejections Under 35 U.S.C. § 102

Claims 36-38, 40-44, 48, and 49 stand rejected under 35 U.S.C. § 102(b) for reciting subject matter which is purportedly anticipated by the subject matter described in U.S. Patent 5,637,469 to Wilding et al. (hereinafter “Wilding”).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under

35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 36, as amended and presented herein, recites an assay system that includes, among other things, a receptor, a reaction zone, at least one detection zone, a source, and a detector. The source is configured and oriented to cause the generation of an evanescent field at the at least one detection zone.

As noted in the Final Office Action, Wilding does not expressly or inherently describe an assay system that includes a source that is configured and oriented to generate an evanescent field at a detection zone. In fact, Wilding lacks any express or inherent description of an assay system of the type that would employ an evanescent field to detect one or more analytes. Accordingly, Wilding does not anticipate each and every element of amended independent claim 36, as would be required to maintain the 35 U.S.C. § 102(b) rejection.

Claims 37, 38, 40-44, 48, and 49 are each allowable, among other reasons, for depending either directly or indirectly from claim 36, which is allowable.

In view of the foregoing, it is respectfully requested that the 35 U.S.C. § 102(b) rejections of claims 36-38, 40-44, 48, and 49 be withdrawn and that each of these claims be allowed.

Allowable Subject Matter

In view of the rejections that were presented in the Final Office Action, and the lack of specific grounds for rejecting claims 2, 3, 5-11, 13-18, 39, and 45-47, it appears that each of these claims, as well as independent claim 1, is directed to allowable subject matter.

ENTRY OF AMENDMENTS

Entry of the proposed claim amendments is respectfully requested.

It is respectfully submitted that the proposed claim amendments do not introduce new matter into the above-referenced application, nor would they require an additional search. Moreover, by addressing the 35 U.S.C. § 112, second paragraph, rejection, the proposed revisions to independent claims 1 and 36 reduce the number of issues that remain for purposes of

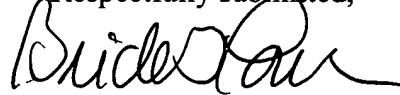
appeal. Further, incorporating the functionality of the planar waveguide recited in claims 39 and 45-47 (*i.e.*, a source that generates an evanescent field) into independent claim 36 without incorporating the more limiting language of these claims into independent claim 36 renders independent claim 36 allowable over Wilding, removing the only issue that remains for purposes of appeal.

In the event that a decision is made not to enter the proposed claim amendments, entry thereof upon the filing of a Notice of Appeal in the above-referenced application is respectfully requested.

CONCLUSION

It is respectfully submitted that each of claims 1-3, 5-11, 13-18, and 36-49 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



Brick G. Power
Registration No. 38,581
Attorney for Applicants
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: September 14, 2004

BGP/rmh
Document in ProLaw